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SEP 27 2010

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In re Application of	:
Dan W.C. Delmer	:
Application No. 09/904,975	: DECISION ON PETITION
Filed: July 12, 2001	: TO INVOKE SUPERVISORY
Attorney Docket No.: DELME-P2739	: AUTHORITY
For: PIPE COUPLING	: UNDER 37 CFR 1.181

This is in response to applicant's petition to invoke supervisory authority under 37 CFR 1.181 filed September 17, 2009 requesting withdrawal of the Notification of Non-Compliant Appeal Brief mailed September 3, 2009 and acceptance of the appeal brief filed June 3, 2009.

The petition is **Granted**.

Applicant indicates that the appeal brief filed June 3, 2009 was filed in accordance with the new format for appeal briefs under the Final Rules for Ex Parte Appeals as published in the Federal Register on June 10, 2008. See *Rules of Practice Before the Board of Patent Appeals and Interferences in Ex Parte Appeals*, 73 Fed. Reg. 32938 (June 10, 2008). Applicant further indicates that there was a clarification notice published in the Federal Register on November 20, 2008 that stated that the Office would not hold an appeal brief to be non-compliant solely for following the new appeal brief format even though the appeal brief is filed before the effective date of the new appeal brief format. See *Clarification of the Effective Date Provision in the Final Rule for Ex Parte Appeals*, 73 Fed. Reg. 70282 (November 20, 2008).

At the outset, it should be noted that the Final Rules for Ex Parte Appeals did not become effective on December 10, 2008 and notice of this delay in the effective date and applicability date was published in the Federal Register on December 10, 2008. See *Rules of Practice Before the Board of Patent Appeals and Interferences in Ex Parte Appeals; Delay of Effective and Applicability Dates*, 73 Fed. Reg. 74972 (December 10, 2008). This delay notice also indicates that the Office will continue to accept appeal briefs filed in the new appeal brief format of revised 37 CFR 41.37 even though it is filed before the effective date of such revision.

A review of the record reveals that the Appeal Brief filed on June 3, 2009 was filed in accordance with the new appeal brief format and that it was held to be non-compliant by the examiner solely on the basis of following the new practice.

In view of the fact that the appeal brief of June 3, 2009 is otherwise acceptable, i.e., it was held to be non-compliant solely for following the new format, the Notice of Non-Compliant Appeal Brief mailed September 3, 2009 is withdrawn and the appeal brief filed June 3, 2009 is now accepted. The application is being returned to the examiner for consideration of the appeal brief.

Any questions regarding this decision should be directed to Supervisory Patent Examiner Daniel P. Stodola at (571) 272-7087.



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LM/DS: 9/17/10